
OLR Bill Analysis

sHB 6651

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE OF CONNECTICUT BROWNFIELD WORKING GROUP.

SUMMARY:

This bill consolidates all brownfield funds into a separate nonlapsing account, and specifies the types of funds that the Department of Economic and Community Development (DECD) must deposit there. It allows the DECD commissioner to use up to 5% of the account's assets to cover administrative costs. The bill deletes provisions allowing her to (1) use up to 5% of a brownfield remediation and development grant or loan to cover reasonable administrative expenses and (2) up to 4% of the proceeds from the bonds authorized specifically for the grant and loan program to cover specified administrative and marketing costs.

The bill also makes several programmatic changes, including allowing developers to use loan funds to reduce blight, but not to acquire property. It authorizes the commissioner to require grant and loan recipients to reimburse the state if they receive remediation funds from other sources. It also narrows criteria for determining whether a substance found on a property constitutes a regulated substance, thus qualifying the developer for liability relief.

The bill makes many technical changes to the DECD brownfield remediation and development programs. It consolidates the definitions governing the programs, eliminates a duplicative municipal brownfield grant program, and places grant and loan programs in separate statutory sections.

EFFECTIVE DATE: October 1, 2013, except for a technical change to the Transfer Act that takes effect January 1, 2014.

CONSOLIDATED BROWNFIELD REMEDIATION AND DEVELOPMENT ACCOUNT

The bill consolidates all brownfield accounts into a separate, nonlapsing account, specifying the types of funds and revenues that must be deposited there. Current law creates such an account for only the brownfield grant and loan program. The bill also requires these funds to go into the reconstituted fund:

1. Urban Action bonds issued for economic development programs and earmarked by the State Bond Commission for the program;
2. principal and interest payments on loans made under the loan program and the Department of Energy and Environmental Protection's (DEEP) Special Contaminated Property Remediation and Insurance Fund, which provide loans for assessing and demolishing contaminated property;
3. money the attorney general recovers from the parties that polluted properties being cleaned up under a state program; and
4. proceeds from any state bonds issued specifically for the loan and grant program and, if the Office of Policy and Management (OPM) secretary approves, any federal or private dollars provided for a project being assisted under the program.

The bill eliminates the criteria the commissioner must use to select a funding source for a brownfield remediation project. When determining the funding source under current law, she must consider the project's feasibility, environmental and public health benefits, spillover economic opportunities, and contribution to the municipal tax base.

In reconstituting the account, the bill eliminates the requirement that the commissioner obtain the OPM secretary's approval before tapping the account to fund a project.

MUNICIPAL BROWNFIELD GRANT PROGRAM

The bill separates the existing brownfield grant and loan program,

placing each component under its own roof. The grant program is opened only to municipalities. The bill allows municipalities to use up to 5% of the grant to cover their reasonable administrative expenses.

The bill allows municipalities to keep a greater share of the proceeds from the sale of a brownfield they remediated with the grant. Under current law, they may keep 20% of the proceeds to cover oversight, administration, and development costs, and, if applicable, lost tax revenue. Under the bill, they may keep 20% of the proceeds to cover these costs, plus the cost of acquiring the brownfield and other eligible costs they incurred to remediate it.

Under current law, municipal grant recipients can make low-interest loans to a private developer if they co-applied for the grant, know how the remediated brownfield will be reused, and have entered into a written agreement. Under the bill, they must enter into the agreement within 45 days after receiving the grant specifying the brownfield's future use.

BROWNFIELD LOAN PROGRAM CHANGES

The bill allows developers to use loan proceeds to reduce blight. As under current law, they can also use the proceeds to create or retain jobs or develop affordable housing.

The bill eliminates the DECD commissioner's ability to provide financing to developers who also initially apply to Connecticut Innovations, Inc. for financing (i.e., participation interest). Under current law, CII may submit an application to DECD on the developer's behalf, providing all the information developers must provide when applying directly to DECD. In these cases, the commissioner cannot require the developer to provide an additional application.

The bill requires developers remediating brownfields for affordable housing to meet the statutory definition of affordable housing. By law, housing is affordable if people earning no more than the median income of the municipality where the housing is located pay no more

than 30% of their income for the housing.

BROWNFIELD CLEANUP ASSISTANCE FOR CURRENT OWNERS OF CONTAMINATED PROPERTY

The bill limits the eligibility of manufacturers for state funding to DECD's loan program. It also eliminates the requirements that may be imposed under current law on manufacturers as a condition for receiving funds. Those requirements are:

1. keeping the property for at least 10 years,
2. continuing to employ state residents for at least 10 years, and
3. reimbursing the state if the owner receives funds from other sources.

LIABILITY PROTECTION PROGRAM

Regulated substance

The bill adopts stricter criteria for determining whether a substance constitutes a regulated substance under two DECD programs providing liability protection to brownfield developers. Under current law, a regulated substance is any compound or material that alters the physical, chemical, biological, or other characteristics of air, water, soil, or sediment when they are mixed with the substance (CGS § 32-9 mm(15)). Under the bill, a regulated substance is petroleum, any flammable substance, or any substance the federal government defines as "hazardous" or "extremely hazardous," or polychlorinated biphenyls in concentrations greater than 50 parts per million. By law, business facilities producing, using, storing, or handling such substances must notify DEEP to that effect (CGS § 22a-134g).

Polychlorinated biphenyls are chemicals that were formerly used in hydraulic fluids, plasticizers, adhesives, fire retardants, way extenders, de-dusting agents, pesticide extenders, inks, lubricants, and cutting oils. They were also used in heat transfer systems and carbonless paper reproduction.

BACKGROUND

Related Bill

sSB 1082, which the Environment Committee favorably reported, creates a Department of Energy and Environmental Protection municipal liability protection program, modifies contamination notice and standards requirements, and creates a new kind of environmental use restriction.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/26/2013)